



Utility Construction Agreement Work by Utility - Actual Cost		Organization and Address	
		Section / Location	
Agreement Number			
State Route Number	Control Section Number		
Region			

THIS AGREEMENT, made and entered into this _____ day of _____, _____, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, by virtue of Title 47 RCW, (hereinafter the "STATE") and the above named organization, (hereinafter the "UTILITY").

WHEREAS, the STATE is planning the construction or improvement of the state route shown above, and in connection therewith it is necessary to remove and/or relocate or construct certain UTILITY facilities as set forth in the attached plans, and

WHEREAS, it is deemed to be in the best public interest for the UTILITY, as owners of said facilities, to perform the work of removing, adjusting, and/or relocating the facilities, and

WHEREAS, the UTILITY has a compensable interest in its facilities and right-of-way by virtue of being located on easements or UTILITY owned right-of-way, and the STATE is obligated to reimburse the UTILITY for the relocation of these facilities, and the UTILITY is obligated for the cost of any relocation required for facilities not on easements or UTILITY owned right-of-way.

NOW THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

I GENERAL

Federal-aid Policy Guide - 23 CFR 645A, Subpart A and amendments thereto, determine and establish the definitions and applicable standards for this AGREEMENT and payment hereunder, and by this reference are incorporated hereby and made a part of this AGREEMENT for all intents and purposes as if fully set forth herein.

The UTILITY shall furnish the labor, materials, equipment, and tools required for and do the work in removing and/or relocating the UTILITY facilities, in accordance with and described in the specifications marked Exhibit "A" and plans marked Exhibit "C" attached hereto, and by this reference made a part of this AGREEMENT.

II PAYMENT

The STATE, in consideration of the faithful performance of the work to be done by the UTILITY, agrees to pay the UTILITY actual direct and related indirect costs accumulated in accordance with a work order accounting procedure as prescribed and approved by the Agency shown in Exhibit "A" under accounting system.

An itemized estimate of cost for work to be performed by the UTILITY at the STATE's expense marked Exhibit "B" is attached hereto and by this reference made a part of this AGREEMENT.

Partial payments may be made upon request of the UTILITY to cover costs incurred, and are not to be more frequent than one (1) per month. It is agreed that payment of any partial claim will not constitute agreement as to the appropriateness of any item and that at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the UTILITY, the UTILITY agrees to refund such overpayment to the STATE.

During the progress of the construction and for a period not less than three (3) years from the date of final payment to the UTILITY, the records and accounts pertaining to the construction of the project and accounting therefore are to be kept available for inspection and audit by the STATE and/or Federal Government and copies of all records, accounts, documents, or other data pertaining to the project will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the 3-year retention period.

The UTILITY shall submit a final billing to the STATE within 90 calendar days following completion of the work involved.

III AUTHORITY TO BEGIN WORK AND SCHEDULE OF WORK

The UTILITY agrees not to commence work until receipt of notice to begin work in writing by the STATE, and that reimbursement will be limited to those costs incurred subsequent to the date of such notification.

The UTILITY agrees to schedule the work herein referred to and perform said work in such manner as not to delay or interfere with the STATE's contractor in the performance of the contract.

IV EXTRA WORK

In the event unforeseen conditions require an increase in the cost of 25 percent or more from that agreed to on Exhibit "B", this AGREEMENT will be modified by supplement AGREEMENT covering said increase.

In the event it is determined that any change from the statement of work contained in this AGREEMENT is required, approval must be secured from the STATE prior to the beginning of such work. Where the change is substantial, written approval must be secured.

Reimbursement for increased work and/or a substantial change in the statement of work shall be limited to costs allowed by a written modification, change order, or extra work order approved by the STATE.

V WORK BY CONTRACT

It is acknowledged that the UTILITY may not be adequately staffed or equipped to perform all the work required hereby, and that all or part of the same may be done by a contract let by the UTILITY. The UTILITY agrees that it shall not advertise or solicit bids for contract work until authorized to do so in writing by the STATE. It is further agreed that the UTILITY must receive written approval of the bid and contractor from the STATE prior to awarding the contract.

If a valid and continuing contract exists between the UTILITY and a contractor, and the UTILITY desires to have the work required by this AGREEMENT performed under the subject contract, the UTILITY shall provide the STATE with a copy of the contract for the STATE to review and approve. The STATE will indicate its approval by including a statement in Exhibit "A" to this AGREEMENT that the work shall be performed by (name and address of contractor) under a continuing contract approved by the STATE.

Nothing in the approval of such contract or agreement by the STATE will constitute an assignment of the UTILITY's rights and/or obligations or otherwise establish direct relations between STATE, UTILITY, and contractor.

VI INSPECTION AND ACCEPTANCE

All of the UTILITY's construction operations, as provided under this AGREEMENT, shall be subject to inspection by the STATE.

Final acceptance of work shall be by payment of the final and complete itemized billing certifying that all the work has been done and upon recommendation of the Regional Administrator of the Department of Transportation.

Nothing in either inspection or acceptance shall reduce the UTILITY's responsibility for the work.

VII SALVAGE

All material removed by the UTILITY shall be reclaimed or disposed of by the UTILITY and shall be credited to the STATE in accordance with Federal-aid Policy Guide - 23 CFR 645A, Subpart A. The UTILITY shall furnish written notice to the STATE for the time and place the materials will be available for inspection. If salvage credit is anticipated on the project, an estimate of the salvage credit will be included in the estimate of cost.

VIII DISCONNECT AND REMOVAL

When it is determined to be in the interest of the STATE to have the UTILITY's facilities removed by the STATE's contractor, the UTILITY will disconnect the facilities shown on Exhibit "C" to be removed by the STATE's contractor at STATE expense. Upon disconnection the STATE shall assume full responsibility for and disposition of the above mentioned facilities. It is agreed that the material to be removed by the STATE's contractor shall have no salvage value to the UTILITY.

IX BETTERMENTS

If adjustment of the UTILITY's facilities does constitute a betterment as defined in Federal-aid Policy Guide - 23 CFR 645A, Subpart A, the betterment credit will be included in the estimate of cost.

X ACCRUED DEPRECIATION

If adjustment of the UTILITY's facilities does involve a credit due for the accrued depreciation of the facility being replaced, this value will be included in the estimate of cost.

XI COMPLIANCE

The UTILITY agrees to comply with all applicable requirements of the STATE which shall be in accordance with the Utilities Accommodation Policy, Chapter 468-34 WAC, and amendments thereto, and said policy and amendments are hereby incorporated in and made a part of this AGREEMENT for all intents and purposes as if fully set forth herein.

**XII
RIGHT OF ENTRY**

The UTILITY hereby grants and conveys to the STATE the right of entry upon all land which the UTILITY has interest, within the right-of-way of the highway, for the purpose of improving and/or constructing said highway.

As noted in Exhibit "A" the UTILITY will, after relocation and/or adjustment of their facilities, execute and deliver to the STATE a quit claim deed removing all UTILITY interests from within the STATE's right-of-way.

Upon completion of the work outlined herein, all future operation and maintenance of the UTILITY's facilities shall be at the sole cost of the UTILITY and without expense to the STATE.

**XIII
EASEMENT, PERMIT, OR FRANCHISE**

The STATE will issue the UTILITY an easement, permit, or franchise, as provided in Exhibit "A", for those UTILITY facilities which remain on or cross the STATE's right-of-way following completion of the work outlined herein.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

UTILITY

By _____

Title _____

Date _____

**XIV
LEGAL RELATIONS**

The UTILITY shall indemnify and hold the STATE and its agents, employees, and/or officers harmless from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the STATE arising out of, in connection with, or incident to the execution of this AGREEMENT and/or the UTILITY's performance or failure to perform any aspect of this AGREEMENT. Provided, however, that if such claims are caused by or result from the concurrent negligence of (a) the UTILITY and (b) the STATE, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the UTILITY, and Provided further, that nothing herein shall require the UTILITY to hold harmless or defend the STATE, its agents, employees, and/or officers from any claims arising from the sole negligence of the STATE, its agents, employees, and/or officers.

**STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION**

By _____

Title _____